

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HARLEY MARINE SERVICES, INC., a  
Washington corporation; OLYMPIC TUG &  
BARGE, INC., a Washington corporation,  
PACIFIC COAST MARITIME, INC.

Plaintiffs,

v.

FATHOM MARINE, INC., a British Columbia  
corporation, FATHOM ENERGY, INC., an  
Alberta corporation,

Defendants.

IN ADMIRALTY

NO. 2:17-cv-00856-MJP

**STIPULATED PROTECTIVE  
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER - 1  
Case No. 2:17-cv-00856-MJP

LAW OFFICES OF  
**NICOLL BLACK & FEIG**  
A PROFESSIONAL LIMITED LIABILITY COMPANY  
1325 FOURTH AVENUE, SUITE 1650  
SEATTLE, WASHINGTON 98101  
TEL: 206-838-7555  
FAX: 206-838-7515

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

4 a. Financial records of Fathom Marine, Inc. not designated as "Attorneys Eyes  
5 Only" material;

6 b. Financial records of Fathom Energy, Inc. not designated as "Attorneys Eyes  
7 Only" material.

8 c. Records of Transport Canada AMP actions against Fathom Marine, Inc.  
9 employees.

10 3. "ATTORNEYS EYES ONLY" MATERIAL

11 "Attorneys Eyes Only" material shall include the following documents and tangible  
12 things produced or otherwise exchanged:

13 Proprietary Information relating to highly sensitive financial information,  
14 including but not limited to, customer identification, sales terms and prices to  
15 specific customers or regarding specific transactions, information regarding  
16 profits, profit margins, salaries, credit line terms and usage, corporate resolutions,  
17 corporate minutes, and prospective marketing strategies.

18 4. SCOPE

19 The protections conferred by this agreement cover not only confidential and attorney  
20 eyes only material (as defined above), but also (1) any information copied or extracted from  
21 confidential and/or attorney eyes only material; (2) all copies, excerpts, summaries, or  
22 compilations of confidential and/or attorney eyes only material; and (3) any testimony,  
23 conversations, or presentations by parties or their counsel that might reveal confidential and/or  
24 attorney eyes only material.

25 However, the protections conferred by this agreement do not cover information that is  
26 in the public domain or becomes part of the public domain through trial or otherwise.

1 5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 5.1 Basic Principles. A receiving party may use confidential material that is  
3 disclosed or produced by another party or by a non-party in connection with this case only for  
4 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
5 disclosed only to the categories of persons and under the conditions described in this  
6 agreement. Confidential material must be stored and maintained by a receiving party at a  
7 location and in a secure manner that ensures that access is limited to the persons authorized  
8 under this agreement.

9 5.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
10 ordered by the court or permitted in writing by the designating party, a receiving party may  
11 disclose any confidential material only to:

12 (a) the receiving party's counsel of record in this action, as well as  
13 employees of counsel to whom it is reasonably necessary to disclose the information for this  
14 litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
17 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
18 designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for  
20 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
21 (Exhibit A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication  
24 of confidential material, provided that counsel for the party retaining the copy or imaging  
25 service instructs the service not to disclose any confidential material to third parties and to  
26 immediately return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
3 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
4 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
5 material must be separately bound by the court reporter and may not be disclosed to anyone  
6 except as permitted under this agreement;

7 (g) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

9 5.3 Filing Confidential Material. Before filing confidential material or discussing or  
10 referencing such material in court filings, the filing party shall confer with the designating  
11 party to determine whether the designating party will remove the confidential designation,  
12 whether the document can be redacted, or whether a motion to seal or stipulation and proposed  
13 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
14 the standards that will be applied when a party seeks permission from the court to file material  
15 under seal.

16 6. ACCESS TO AND USE OF ATTORNEYS EYE ONLY MATERIAL

17 6.1 Basic Principles. A receiving party's attorney may use attorney eyes only  
18 material that is disclosed or produced by another party or by a non-party in connection with  
19 this case only for prosecuting, defending, or attempting to settle this litigation. Attorney eyes  
20 only material may be disclosed only to the categories of persons and under the conditions  
21 described in this agreement. Attorney eyes only material must be stored and maintained by a  
22 receiving party's attorney at a location and in a secure manner that ensures that access is  
23 limited to the persons authorized under this agreement.

24 6.2 Disclosure of "ATTORNEY EYES ONLY" Information or Items. Unless  
25 otherwise ordered by the court or permitted in writing by the designating party, a receiving  
26 party's attorney may disclose any attorney eyes only material only to:

1 (a) the receiving party's counsel of record in this action, as well as  
2 employees of counsel to whom it is reasonably necessary to disclose the information for this  
3 litigation;

4 (b) experts and consultants to whom disclosure is reasonably necessary for  
5 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
6 (Exhibit A);

7 (c) the court, court personnel, and court reporters and their staff;

8 (d) copy or imaging services retained by counsel to assist in the duplication  
9 of attorney eyes only material, provided that counsel for the party retaining the copy or  
10 imaging service instructs the service not to disclose any attorney eyes only material to anyone  
11 and to immediately return all originals and copies of any attorney eyes only material;

12 (e) during their depositions, witnesses in the action to whom disclosure is  
13 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
14 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
15 Pages of transcribed deposition testimony or exhibits to depositions that reveal attorney eyes  
16 only material must be separately bound by the court reporter and may not be disclosed to  
17 anyone except as permitted under this agreement;

18 (f) the author or recipient of a document containing the information or a  
19 custodian or other person who otherwise possessed or knew the information.

20 6.3 Filing Attorney eyes only Material. Before filing attorney eyes only material or  
21 discussing or referencing such material in court filings, the filing party shall confer with the  
22 designating party to determine whether the designating party will remove the attorney eyes  
23 only designation, whether the document can be redacted, or whether a motion to seal or  
24 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures  
25 that must be followed and the standards that will be applied when a party seeks permission  
26 from the court to file material under seal.

1     7.     DESIGNATING PROTECTED MATERIAL

2             7.1     Exercise of Restraint and Care in Designating Material for Protection. Each  
3 party or non-party that designates information or items for protection under this agreement  
4 must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards. The designating party must designate for protection only those parts of  
6 material, documents, items, or oral or written communications that qualify, so that other  
7 portions of the material, documents, items, or communications for which protection is not  
8 warranted are not swept unjustifiably within the ambit of this agreement.

9             Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
11 unnecessarily encumber or delay the case development process or to impose unnecessary  
12 expenses and burdens on other parties) expose the designating party to sanctions.

13             If it comes to a designating party's attention that information or items that it designated  
14 for protection do not qualify for protection, the designating party must promptly notify all  
15 other parties that it is withdrawing the mistaken designation.

16             7.2     Manner and Timing of Designations. Except as otherwise provided in this  
17 agreement (see, *e.g.*, second paragraph of section 7.2(a) below), or as otherwise stipulated or  
18 ordered, disclosure or discovery material that qualifies for protection under this agreement  
19 must be clearly so designated before or when the material is disclosed or produced.

20             (a)     Information in documentary form: (*e.g.*, paper or electronic documents  
21 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
22 proceedings), the designating party must affix the word "CONFIDENTIAL" or "ATTORNEY  
23 EYES ONLY" (as applicable) to each page that contains confidential or attorney eyes only  
24 material. If only a portion or portions of the material on a page qualifies for protection, the  
25 producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
26 markings in the margins).

1           (b) Testimony given in deposition or in other pretrial proceedings: the  
2 parties and any participating non-parties must identify on the record, during the deposition or  
3 other pretrial proceeding, all protected testimony, without prejudice to their right to so  
4 designate other testimony after reviewing the transcript. Any party or non-party may, within  
5 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
6 designate portions of the transcript, or exhibits thereto, as confidential or attorney eyes only. If  
7 a party or non-party desires to protect confidential information at trial, the issue should be  
8 addressed during the pre-trial conference.

9           (c) Other tangible items: the producing party must affix in a prominent  
10 place on the exterior of the container or containers in which the information or item is stored  
11 the word "CONFIDENTIAL" or "ATTORNEY EYES ONLY" as applicable. If only a portion  
12 or portions of the information or item warrant protection, the producing party, to the extent  
13 practicable, shall identify the protected portion(s).

14       7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
15 designate qualified information or items does not, standing alone, waive the designating party's  
16 right to secure protection under this agreement for such material. Upon timely correction of a  
17 designation, the receiving party must make reasonable efforts to ensure that the material is  
18 treated in accordance with the provisions of this agreement.

19   8. CHALLENGING DESIGNATIONS

20       8.1 Timing of Challenges. Any party or non-party may challenge a designation of  
21 confidentiality or attorneys eyes only at any time. Unless a prompt challenge to a designating  
22 party's designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
23 economic burdens, or a significant disruption or delay of the litigation, a party does not waive  
24 its right to challenge a designation by electing not to mount a challenge promptly after the  
25 original designation is disclosed.

1        8.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
2 regarding designations without court involvement. Any motion regarding designations or for a  
3 protective order must include a certification, in the motion or in a declaration or affidavit, that  
4 the movant has engaged in a good faith meet and confer conference with other affected parties  
5 in an effort to resolve the dispute without court action. The certification must list the date,  
6 manner, and participants to the conference. A good faith effort to confer requires a face-to-face  
7 meeting or a telephone conference.

8        8.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
9 intervention, the designating party may file and serve a motion to retain the applicable  
10 designation under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if  
11 applicable). The burden of persuasion in any such motion shall be on the designating party.  
12 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
13 unnecessary expenses and burdens on other parties) may expose the challenging party to  
14 sanctions. All parties shall continue to maintain the material in question in compliance with its  
15 designation until the court rules on the challenge.

16    9.        PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
17                LITIGATION

18                If a party is served with a subpoena or a court order issued in other litigation that  
19 compels disclosure of any information or items designated in this action as  
20 "CONFIDENTIAL" or "ATTORNEYS EYES ONLY," that party must:

21                (a)        promptly notify the designating party in writing and include a copy of  
22 the subpoena or court order;

23                (b)        promptly notify in writing the party who caused the subpoena or order to  
24 issue in the other litigation that some or all of the material covered by the subpoena or order is  
25 subject to this agreement. Such notification shall include a copy of this agreement; and  
26



1 (c) cooperate with respect to all reasonable procedures sought to be pursued  
2 by the designating party whose designated material may be affected.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
5 confidential or attorneys eyes only material to any person or in any circumstance not  
6 authorized under this agreement, the receiving party must immediately (a) notify in writing the  
7 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
8 unauthorized copies of the protected material, (c) inform the person or persons to whom  
9 unauthorized disclosures were made of all the terms of this agreement, and (d) request that  
10 such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is  
11 attached hereto as Exhibit A.

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
13 MATERIAL

14 When a producing party gives notice to receiving parties that certain inadvertently  
15 produced material is subject to a claim of privilege or other protection, the obligations of the  
16 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
17 provision is not intended to modify whatever procedure may be established in an e-discovery  
18 order or agreement that provides for production without prior privilege review. The parties  
19 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

20 12. NON TERMINATION AND RETURN OF DOCUMENTS

21 Within 60 days after the termination of this action, including all appeals, each receiving  
22 party must return all confidential and/or attorneys eyes only material to the producing party,  
23 including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon  
24 appropriate methods of destruction.

25 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
26 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,

1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
2 work product, even if such materials contain confidential or attorneys eyes only material.

3 The obligations imposed by this agreement shall remain in effect until a designating  
4 party agrees otherwise in writing or a court orders otherwise.

5 13. DOCUMENTS PREVIOUSLY PRODUCED OR RECEIVED OUTSIDE  
6 DISCOVERY PROCESS

7 Nothing in this Protective Order shall be construed in any way to control the use,  
8 dissemination, publication or disposition by a party (a) of documents or information existing in  
9 the files of that party, as a result of previous discovery, prior to the date of the Protective  
10 Order, or (b) of documents or information received at any time by that party outside the course  
11 of the discovery process in this litigation. The confidential or privileged status, if any, of such  
12 documents or information shall be determined without respect to this Protective Order.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 DATED: March 29, 2018

/s/ Thomas G. Waller

Thomas G. Waller, WSBA No. 22963

/s/ Mark A. Krisher

Mark A. Krisher, WSBA No. 39314

/s/ Robert D. Sykes

Robert D. Sykes, WSBA No. 49635

*Attorneys for Plaintiffs Olympic Tug & Barge,  
Inc. and Harley Marine Services, Inc.*

21 DATED: March 29, 2018

/s/ Christopher W. Nicoll

Christopher W. Nicoll, WSBA No. 20771

/s/ Chris P. Reilly

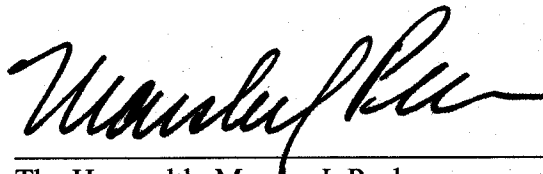
Chris P. Reilly, WSBA No. 25585

*Attorneys for Defendants Fathom Marine, Inc.  
and Fathom Energy, Inc.*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7  
8 DATED: March 29, 2018



The Honorable Marsha J. Pechman  
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of *Harley Marine Services, Inc., et al. v. Fathom Marine, Inc., et al.*, Case no. 2:17-cv-00856-  
MJP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
and I understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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**DECLARATION OF SERVICE**

I, Christopher W. Nicoll, hereby declare and state as follows:

I am a citizen of the United States and a resident of Seattle, Washington; I am over the age of eighteen years and not a party to the within action; my business address is Nicoll Black & Feig PLLC, 1325 Fourth Avenue, Suite 1650, Seattle, WA 98101.

On the date set forth below, I caused to be served:

• **STIPULATED PROTECTIVE ORDER**

in the within matter by arranging for a copy to be delivered on the interested parties in said action, in the manner described below, addressed as follows

Thomas G. Waller  
Mark A. Krisher  
Robert D. Sykes  
BAUER MOYNIHAN & JOHNSON LLP  
2101 Fourth Avenue, Suite 2400  
Seattle, WA 98121  
Telephone: (206) 443-3400  
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E-mail: [rsykes@bmjlaw.com](mailto:rsykes@bmjlaw.com)  
*Attorneys for Plaintiffs Olympic Tug & Barge,  
Inc. and Harley Marine Services, Inc.*

<input type="checkbox"/>	HAND DELIVERY
<input type="checkbox"/>	E-MAIL
<input type="checkbox"/>	U.S. MAIL
<input checked="" type="checkbox"/>	ECF

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 29, 2018, at Seattle, Washington.

/s/ Christopher W. Nicoll  
Christopher W. Nicoll, WSBA No. 20771